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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Ben A. Lear

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EXAMINER

MAIS, MARK A

ART UNIT

PAPER NUMBER

2467

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/936,624	Applicant(s) LEAR ET AL.	
	Examiner MARK A. MAIS	Art Unit 2467	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 63 and 64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 63 and 64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 63-64 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenner et al. (USP 6,502,125).

3. With regard to claim 63, Kenner et al. discloses a system [**Fig. 1**] comprising:

a management center [**Fig. 1, Mirror Service Provider (MSP) 32**];

a plurality of nodes [**Fig. 1, Delivery Sites 26, 28, 30**] configured to relay data from the management center to a client [**e.g., Fig. 1, User Terminal 12**]; and

wherein the management center comprises a mapping engine that is configured to determine a route from the management center to the client [**Smart mirroring, col. 5, lines 20-**

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25; includes traceroute, reverse traceroute, and dynamic traceroute, col. 9, line 61 to col. 11, line 18; e.g., Fig. 1, between MSP 32 and client 12; MSP 32 provides management functions to distribution of Delivery Sites 26, 28, and 30 as well as allocation of requests to Content Providers 22, 24/Delivery Sites 26, 28, and 30, col. 7, lines 67; Delivery sites have the same content as Content Providers, col. 3, line 63 to col. 4, line 4; i.e., a broadcast stream is delivered from the Content Provider to the Delivery Site] via a selected one of the nodes [Smart mirroring, col. 5, lines 20-25; includes traceroute, reverse traceroute, and dynamic traceroute, col. 9, line 61 to col. 11, line 18; e.g., Fig. 1, between MSP 32 and Content Providers 22, 24/Delivery Sites 26, 28, and 30; network performance is interpreted as mapping traceroutes between Content Providers/Delivery Sites].

4. With regard to claim 64, Kenner et al. discloses a method [Fig. 1] comprising:

receiving a request for data from a client, the request being received by a management center [client requests delivery site file from MSP 32 (via configuration utility), col. 5, lines 50-56; traceroute information is stored in MSP 32 and continuous test data is correlated to information in the database, col. 11, lines 28-35];

directing the client to a node that is selected as being best situated to relay the data from a content provider to the client, the client being directed to the node by the management center [MSP 32 provides management functions to distribution of Delivery Sites 26, 28, and 30 as well as allocation of requests to Content Providers 22, 24/Delivery Sites 26, 28, and 30, col. 7, lines 67; Delivery sites have the same content as Content Providers, col. 3, line 63 to col.

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4, line 4; i.e., a broadcast stream is delivered from the Content Provider to the Delivery Site]; and

relaying the data from the content provider to the client via the selected node
[audio/video clips from a Delivery Site is played on a MPEG video player which has fast-forward/rewind functions, col. 14, lines 26-57; MPEG movies, when allowed, have a known duration when played on-demand and are already loaded on the client's computer, col. 14, line 58 to col. 15, line 12].

Response to Arguments

5. Applicant's arguments filed on October 1, 2009 have been fully considered but they are not persuasive.

6. With respect to claim 63, Applicants state that Delivery Sites 26, 28, and 30 of Kenner et al. cannot be interpreted as the claimed nodes because the claimed nodes receive data from delivery sites and argue, apparently, that the claimed nodes cannot be the delivery sites themselves [See **Applicants' Amendment dated October 1, 2009, page 4, paragraph 2**]. Applicants further state that the claimed nodes are intermediate between the clients and delivery sites and argue, apparently, that Kenner et al. fails to disclose this feature [See **Applicants' Amendment dated October 1, 2009, page 4, paragraph 2**]. Applicants further state that the Delivery Sites of Kenner et al. are merely mirror sites and therefore, apparently, cannot relay data from a content provider [See **Applicants' Amendment dated October 1, 2009, page 4, paragraph 3 to page**

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5, paragraph]. Applicants make similar arguments with respect to claim 64 [**See Applicants' Amendment dated October 1, 2009, page 5, paragraph 3**]. The examiner respectfully disagrees.

7. First, as noted in the rejection of claim 63 above, Kenner et al. discloses Mirror Service Provider (MSP) 32 [**Fig. 1**]; Delivery Sites 26, 28, 30 [**Fig. 1**]; and User Terminal 12 [**Fig. 1**]. Smart mirroring [**col. 5, lines 20-25**] includes traceroute, reverse traceroute, and dynamic traceroute [**col. 9, line 61 to col. 11, line 18; for example, between MSP 32 and client 12 (Fig. 1)**]. MSP 32 provides management functions to distribution of Delivery Sites 26, 28, and 30 as well as allocation of requests to Content Providers 22, 24/Delivery Sites 26, 28, and 30 [**col. 7, lines 67**]. Delivery sites have the same content as Content Providers [**col. 3, line 63 to col. 4, line 4; i.e., a broadcast stream is delivered from the Content Provider to the Delivery Site**].

8. Second, although Applicants are arguing that the claimed nodes cannot be the delivery sites themselves, there is no such limitation in the claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the claimed nodes cannot be the delivery sites themselves) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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9. Third, although Applicants are arguing that the claimed nodes are intermediate to (or positioned between) the delivery sites and the client, there are no such limitation sin the claims.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the claimed nodes are intermediate to (or positioned between) the delivery sites and the client) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

10. Fourth, although Applicants are arguing the Delivery Sites of Kenner et al. are merely mirror sites and/or cannot relay data from a content provider, such a distinction cannot logically exist. If the Delivery Sites are mirror sites, then, when selected, they *necessarily* must relay the “mirrored” data (from the Content Provider) to the client. The examiner notes the broadest reasonable interpretation with respect to Applicants' Specification.

11. Fifth, if applicants are arguing that the claimed nodes perform layer three (of the Open System Interconnect (OSI) Model) routing (e.g., IP packet routing), such a distinction is not present in the claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies [i.e., the claimed nodes perform layer three (of the OSI Model) routing (e.g., IP packet routing)] are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

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limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

12. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK A. MAIS whose telephone number is (571)272-3138. The examiner can normally be reached on 5am-4pm.

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15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pankaj Kumar can be reached on 571-272-3011. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

November 19, 2009

/MARK A. MAIS/

Examiner, Art Unit 2467

/Pankaj Kumar/

Supervisory Patent Examiner, Art Unit 2467